

**STATE OF ILLINOIS
SECRETARY OF STATE
SECURITIES DEPARTMENT**

**IN THE MATTER OF: CHARLES J. DUSHEK,
CAPITAL MANAGEMENT ASSOCIATES, INC.,
and its partners, members, officers, directors, agents,
employees, affiliates, successors and assigns.**

File No. C0900465

**AMENDED
NOTICE OF HEARING**

**TO THE RESPONDENTS: CAPITAL MANAGEMENT ASSOCIATES, INC.
(CRD #123730)**

Attn: Charles J. Dushek
801 Warrenville Road
Lisle, Illinois 60532

**CHARLES J. DUSHEK
(CRD #2120926)
801 Warrenville Road
Lisle, Illinois 60532**

c/o Bernard F. Doyle, Jr.
Doyle & Bolotin, Ltd.
Attorneys at Law
55 W. Monroe Street, Ste 1200
Chicago, Illinois 60603-5011

You are hereby notified that pursuant to Section 11.F of the Illinois Securities Law of 1953 [815 ILCS 5] (the "Act") and 14 Ill. Adm. Code 130, Subpart K, a public hearing will be held at 69 West Washington Street, Suite 1220, Chicago, Illinois 60602, on May 28, 2015, at the hour of 10:00 a.m. or as soon as possible thereafter, before Connie Henrichs or such other duly designated Hearing Officer of the Secretary of State.

Said hearing will be held to determine whether an Order shall be entered suspending registrations of Charles J. Dushek ("Dushek") and Capital Management Associates, Inc. ("CMA") (the "Respondents"), as investment advisor representative and investment advisor, respectively, in the State of Illinois, and/or granting such other relief as may be authorized under the Act including but not limited to the imposition of a monetary fine in the maximum amount

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pursuant to Section 11.E(4) of the Act, payable within ten (10) business days of the entry of the Order.

The grounds for such proposed action are as follows:

BACKGROUND FACTS

1. That at all relevant times, Respondent Capital Management Associates, Inc. ("CMA") was registered with the Secretary of State as an Investment Advisor in the State of Illinois pursuant to Section 8 of the Act.
2. That at all relevant times, Respondent Dushek was registered with the Secretary of State as an Investment Advisor Representative in the State of Illinois pursuant to Section 8 of the Act.
3. That at all relevant times Respondent Dushek was both registered through and a control person of Respondent CMA, being both a direct owner and executive officer of CMA.
4. That between 2008 and 2012, Respondents placed hundreds of millions of dollars in securities trades for which the majority, the Respondents did not designate or allocate whether the trades were being purchased personally or for clients.
5. When the Respondents placed orders, they made block purchases in Respondent CMA's brokerage accounts that were later allocated to client accounts or personal accounts of the Respondents.
6. Respondents delayed allocating trades, typically waiting at least one trading day - and often several days - before allocating the trades to client accounts or their own personal accounts and by that time knowing which trades were profitable.
7. The Respondents did not use order management software such as Moxy to designate, before executing the trade, the account that was placing the orders.
8. Respondent CMA placed trades through brokerage accounts maintained at Charles Schwab & Co., Inc. ("Schwab") and E*Trade Securities, LLC ("ETrade").
9. GreatBanc Trust Company ("GreatBanc") acted as custodian for Respondent CMA's client accounts and Respondent Dushock's and Dusheck's family personal accounts. GreatBanc allocates the securities to client accounts based on directives from Respondents.
10. Allocating trades on the same date that the trade is placed is considered an industry standard.

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11. It is considered best practices in the industry to determine trade allocations before a trade is place or immediately thereafter; for the reason as to protect against fraudulent allocation schemes such as cherry picking.
12. As early as 2011, GreatBanc warned Respondents regarding their continuous practice of late/delayed allocations, of which Respondents ignored or provided bogus excuses for the delays.
13. Between January 12, 2011 and January 18, 2011, Respondents placed multiple trades for a total of approximately 14,600 shares of ALSK .
14. Of the aforementioned trades, Respondents allocates 5000 shares to M. Dushek, Respondent Dushek's wife and 3000 to Respondent CMA.
15. Respondents did not allocate the aforementioned trades to client or personal accounts until January 19, 2011 and/or January 20, 2011.
16. As a result of respondents' late/delayed allocations of the trades, respondents "purchased" their shares of ALSK at a price of \$9.26, \$9.27 and \$9.38 per share, whereas respondents' clients purchased shares of ALSK at a price of \$9.77, \$9.88 and \$9.9 per share during the exact same time period.
17. Respondents' late/delayed allocation or cherry picking scheme enabled Respondents to sell the same shares of ALSK stock it purchased for M. Dushek and Respondent CMA and realize trading gains.
18. Prior to May 2, 2013, Respondents filed with the State of Illinois Form ADV applications for registration of Respondent CMA, stating in the brochure that it does not "aggregate or 'bunch'" its trade order with orders for other clients.
19. However, between 2008 and 2012, Respondents placed trade orders for both its clients and respondents together under the same order number or in "bunches".
20. On September 9, 2008, Respondents placed trades for shares of AMR stock for Respondent CMA, together with its other clients. These trades were "bunched" together in one order, ODA# 6012.
21. On January 12, 2011, Respondents placed trades for shares of ALSK stock for Respondent Dushek, together with respondents other clients. These trades were "bunched" together in one order, ODA# 104483.
22. On or about July 13, 2005, September 21, 2006 and November 4, 2008, Respondents filed with the State of Illinois Form ADV applications for registration of Respondent CMA indicating that Respondent "CMA does not

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make short term trades in any security on the same day that buy or sell transactions are done for client holdings in the same security.”

23. On or about August 1, 2008, Respondents made purchases of 3000 shares of AA stock for clients of Respondent CMA. On the same day, within 15 minutes after purchasing the shares of AA stock for its clients, Respondents purchased and sold 2250 shares of AA stock for Respondent Dushek’s son, Charles S. Dushek.
24. On or about May 2, 2013, Respondents filed a subsequent Form ADV application for registration indicating that Respondent’s “practice is to execute client account orders separately to eliminate any conflicts of interest between clients and proprietary and personal account trading. Our internal controls designed to prevent ‘contemporaneous trading’ are to wait 10 minutes after any client trade to place any trade for ourselves in the same security.”
25. The activities described above, constitute the activities of an Investment Adviser and/or Investment Adviser Representative as defined in Sections 2.12 and 2.12b of the Act.

COUNT I

**815 ILCS 5/12.F violation: Respondents engaged
in practices in connection with the sale of securities
that worked a fraud or deceit
on the purchaser thereof**

- 1-25. The Illinois Secretary of State re-alleges and incorporates paragraphs 1 through 25 above, as paragraphs 1 through 25 of this Count I.
26. Section 12.F of the Illinois Securities Law of 1953, 815 ILCS 5/1 *et seq.*, states that it shall be a violation of the provisions of the Act for any person to “engage in any transaction, practice, or course of business in connection with the sale or purchase of securities which works or tends to work a fraud or deceit upon the purchaser or seller thereof.”
27. The facts alleged in paragraphs 1 through 26 above allege facts that show conduct by the Respondents that violated Section 12.F of the Act. In particular: Respondents CMA and Dushek engaged in a fraudulent “cherry picking” scheme whereby respondents in delaying the allocation of trades, assigned profitable trades to Respondents CMA and Dushek, as well as Respondent Dushek’s family and unprofitable or less profitable trades to Respondent CMA clients.
28. By virtue of the foregoing, Respondents violated Sections 12.F of the Act.

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COUNT II

**815 ILCS 5/12.G violations: Respondents obtained
Complainants' money by making
untrue statement of material fact
and omission to state a material fact**

- 1-25. The Illinois Secretary of State re-alleges and incorporates paragraphs 1 through 25 of Count I, as paragraphs 1 through 25 of this Count II.
26. Section 12.G of the Illinois Securities Law of 1953, 815 ILCS 5/1 *et seq.*, states that it shall be a violation of the provisions of the Act for any person to "obtain money or property through the sale of securities by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading."
27. The facts alleged in paragraphs 1 through 26 above allege facts that show conduct by the Respondents that violate Section 12.G of the Act. In particular: Respondents failed or omitted to inform its clients that the allocation of ownership of the shares purchased was not assigned or allocated until after it was determined whether the trade was profitable.
28. By virtue of the foregoing, Respondents violated Sections 12.G of the Act.

COUNT III

**815 ILCS 5/12.H violation: Respondents signed or circulated
statement, prospectus, or other paper or document
pertaining to any security knowing or having
reasonable grounds to know any material
representation therein contained to be false or untrue**

- 1-25. The Illinois Secretary of State re-alleges and incorporates paragraphs 1 through 25 of Count I, as paragraphs 1 through 25 of this Count III.
26. Section 12.H of the Illinois Securities Law of 1953, 815 ILCS 5/1 *et seq.*, states that it shall be a violation of the provisions of the Act for any person to "sign or circulate any statement, prospectus, or other paper or document required by any provision of this Act or pertaining to any security knowing or having reasonable grounds to know any material representation therein contained to be false or untrue."

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27. The facts alleged in paragraphs 1 through 26 above allege facts that show conduct by the Respondents that violate Section 12.H of the Act. In particular: Respondent CMA's Form ADV applications for registration indicated in its brochure that it does not "aggregate or 'bunch'" its trade order with orders for other clients, when in fact it "bunched" the vast majority of its trade order with the orders of other clients. Additionally, Respondent CMA's Form ADV applications for registration indicated Respondent CMA "does not make short term trades in any security on the same day that buy or sell transactions are done for client holdings in the same security." However, Respondents habitually traded in securities on the same day that it bought and/or sold the same securities for its clients.
28. By virtue of the foregoing, Respondents violated Sections 12.H of the Act.

COUNT IV

**815 ILCS 5/12.I violation: Respondent employed a
scheme to defraud in connection with the sale of securities**

- 1-25. The Illinois Secretary of State re-alleges and incorporates paragraphs 1 through 25 of Count I, as paragraphs 1 through 25 of this Count IV.
26. Section 12.I of the Illinois Securities Law of 1953, 815 ILCS 5/1 *et seq.*, states that it shall be a violation of the provisions of the Act for any person to "employ any device, scheme or artifice to defraud in connection with the sale or purchase of any security, directly or indirectly."
27. The facts alleged in paragraphs 1 through 26 above allege facts that show conduct by the Respondents that violate Section 12.I of the Act. In particular: Respondents CMA and Dushek engaged in a fraudulent "cherry picking" scheme whereby respondents in delaying the allocation of trades, assigned profitable trades to Respondents CMA and Dushek, as well as Respondent Dushek's family and unprofitable or less profitable trades to Respondent CMA clients.
28. By virtue of the foregoing, Respondents violated Sections 12.I of the Act.

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COUNT V

**815 ILCS 5/12.J violation: Respondents acting as an investment adviser
and/or investment adviser representative
employed a scheme to defraud in connection
with the sale of securities**

- 1-25. The Illinois Secretary of State re-alleges and incorporates paragraphs 1 through 25 of Count I, as paragraphs 1 through 25 of this Count V.
26. That Section 12.J of the Act provides, *inter alia*, that it shall be a violation of the provisions of the Act for any person to “when acting as an investment adviser, investment adviser representative, or federal covered investment adviser, by any means or instrumentality, directly or indirectly: (1) To employ any device, scheme or artifice to defraud any client or prospective client; (2) To engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client; or (3) To engage in any act, practice or course of business which is fraudulent, deceptive, or manipulative.
27. The facts alleged in paragraphs 1 through 26 above allege facts that show conduct by the Respondents that violate Section 12.J of the Act. In particular: Respondents CMA and Dushek engaged in a fraudulent “cherry picking” scheme whereby respondents in delaying the allocation of trades, assigned profitable trades to Respondents CMA and Dushek, as well as Respondent Dushek’s family and unprofitable or less profitable trades to Respondent CMA clients.
28. By virtue of the foregoing, Respondents violated Sections 12.J of the Act.

COUNT VI

815 ILCS 5/8(E)(1)(b), (f) and (g)

- 1-25. The Illinois Secretary of State re-alleges and incorporates paragraphs 1 through 25 of Count I, as paragraphs 1 through 25 of this Count VI.
26. That Section 8.E of the Act provides, *inter alia*, that the registration of a salesperson, investment adviser, or investment adviser representative may be denied, suspended or revoked if the Secretary of State finds that the salesperson, investment adviser, or investment adviser representative:
- a. Has engaged in any unethical practice in connection with any security, the offer or sale of securities or in any fraudulent business practice (815 ILCS 5/8(E)(1)(b));

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- b. Has violated any provisions of this Act (815 ILCS 5/8(E)(1)(g)).
27. Paragraphs 1 through 26, above, allege facts that support the revocation of Respondents registration as investment advisor and investment advisor representative.

You are further notified that you are required pursuant to Section 130.1104 of the Rules and Regulations (14 ILL. Adm. Code 130) (the "Rules"), to file an answer to the allegations outlined above within thirty (30) days of the receipt of this Notice. A failure to file an answer within the prescribed time shall be construed as an admission of the allegations contained in the Notice of Hearing.

Furthermore, you may be represented by legal counsel; may present evidence; may cross-examine witnesses and otherwise participate. A failure to so appear shall constitute default, unless any Respondent has upon due notice moved for and obtained a continuance.

A copy of the Rules, promulgated under the Act and pertaining to hearings held by the Office of the Secretary of State, Securities Department, is located at <http://www.cyberdriveillinois.com/departments/securities/lawrules.html>.

Delivery of Notice to the designated representative of any Respondent constitutes service upon such Respondent.

Dated: This 6th day of April 2015.



JESSE WHITE
Secretary of State
State of Illinois

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